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Paper No. 9

Clark & Elbing LLP
101 Federal Street
Boston, MA 02110

In re Application of
Aschenbrenner et al.
Application No. 10/083,008
Patent No. 6,949,567
Filed: February 26, 2002
Attorney Docket No. 50125/041002

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JUL 17 2006

OFFICE OF PETITIONS

DECISION GRANTING APP. For PTA

This decision is in response to applicant's "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(b)" timely¹ filed on November 25, 2005 requesting that the Office adjust the PTA determination at the time of the issuance of the patent from a determination of two hundred and sixty-two (262) days to a determination of four hundred and five (405) days.

Applicant's application is **GRANTED** to the extent herein indicated. The Office will issue a certificate of correction to reflect this decision. In addition, the Office will adjust the PAIR calculation to reflect this decision. The proper amount of PTA at the time of the issuance of the patent is two hundred and eighty-three (283) days.

Applicants are given thirty days to reply to this decision if they disagree. No extensions of time are granted under 37 CFR 1.136.

Applicant assert that the Office was correct in their determination of sixty-one days of Office delay for failing to meet the requirements of 37 CFR 1.702(a)(1). Applicants dispute the amount of reduction under 37 CFR 1.704(b) for filing a response to the Notice to file missing parts more than three months after the notice was mailed. Applicants assert that the reply was submitted on June 12, 2002 not July 25, 2002 as asserted by the Office. Accordingly, applicant asserts that they did not fail to engage in reasonable efforts to conclude prosecution of the application for the reply to the missing parts notice. Applicants do not dispute the four-day reduction under 37 CFR 1.704(b) for the submission of the response to the 10/16/2003 non-final rejection on January 20, 2004. Applicants assert that the Office delayed an additional three hundred and forty-eight days under 37 CFR 1.702(a)(4) for issuing the application more than four months after the payment of the issue fee and all other requirements being satisfied. Applicants did not dispute the one hundred and twenty day reduction under 37 CFR 1.704(c)(10).

¹Patent issued on September 27, 2005. The Office notes that applicants had previously timely submitted a request for reconsideration of Patent Term Adjustment under 37 CFR 1.705(b) requesting that the proper amount of PTA at the time of the mailing of the notice of allowance is fifty-seven days. The Office will combine the two applications into this one (1) decision.

Applicants arguments are persuasive as to the actual day of response to the notice to file missing parts. The Office notes that zero delay by applicant occurred in responding to the notice to file missing parts. According, at the time of the mailing of the notice of allowance the correct amount of PTA was fifty-seven days($61-4 = 57$). Note that subsequent to the mailing of the notice of allowance, applicant earned an additional three hundred and forty-six (346) days for the Office's failure to issue the application within four months of the issue fee being paid and other requirements being satisfied pursuant to 37 CFR 1.702(a)(4). Applicants' assertion of delay of 348 was not accurate.² Accordingly, the certificate of correction will reflect a final determination of(two hundred and eighty three(283) days ($346+61 -4 - 120 = 283$)).

After the mailing of this decision, the Office will forward this application to the certificate of correction branch for a prompt issuance of the a certificate of correction.

The Office has charged the \$200.00 fee. No additional fees are required. The Office is providing applicants a \$200.00 refund for the submission of the application under 1.704(b). The Office improperly assessed a \$400.00 fee for such application.

Any questions concerning this decision should be directed to Kery A. Fries, Senior Legal Advisor, Office of Patent Legal Administration, Office of Deputy Commissioner for Patent Examination Policy at 571-272-7757.



Kery Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

cc: adjusted PAIR calculation
Draft cert of correction

²The delay began on October 17, 2004 and ending on September 27, 2005, a three hundred and forty-six day delay.

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 6,949,567 B2

DATED : September 27, 2005

INVENTOR(S) : Aschenbrenner al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (262) days

Delete the phrase "by 262days" and insert – by 283 days--